

BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

July 26, 2001

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Reply to the Comments of AT&T and the comments of XO regarding the FCC's March 23, 2001 Public Notice. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA Service) in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

**BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO THE
COMMENTS OF AT&T AND THE COMMENTS OF XO TENNESSEE
REGARDING THE FCC'S MARCH 23, 2001 PUBLIC NOTICE**

BellSouth Telecommunications Inc. ("BellSouth") hereby files its Reply to the Comments of AT&T and the Comments of XO Tennessee ("XO") on the FCC's March 23, 2001 Public Notice (collectively, the "Comments"). In the Comments, AT&T and XO argue that the Tennessee Regulatory Authority ("TRA") should adopt Federal Communications Commission ("FCC") Section 271 procedures—and specifically the "complete when filed" standard—when evaluating BellSouth's Section 271 submission.

BellSouth strongly disagrees that the TRA should be so constrained. As explained in Section II, below, the role of the TRA is that of a fact finder, akin to a trial court, and the FCC expects the TRA to review all of the information at its disposal. The TRA's task in the Section 271 process is to advise the FCC based on current information of the ongoing process of local competition at the point when the TRA files its twenty-day comments. The TRA should not embrace AT&T's invitation for delay.

I. Competition in Tennessee is Thriving.

The most compelling reason not to delay the Section 271 process is the current status of competition in the local market in Tennessee. BellSouth has irrevocably opened this market to competition, and the vigorous contest for market share in Tennessee is by itself a sufficient basis for the TRA to move forward. BellSouth estimates that as of May 2001, competitive local exchange carriers ("CLECs") served approximately 343,500 lines in Tennessee, which translates into approximately 11.7% of the local market. These figures are comparable to market share figures in states in which Regional Bell Operating Companies have already gained long distance relief. In Texas, for example, CLECs had captured between 8.4% - 14.0% of the local market when Southwestern Bell Corporation ("SBC") gained approval for entry into the interLATA market, and in Oklahoma, CLECs had a market share of between 5.5% - 9.0%. There is no doubt that local competition is thriving in Tennessee.

The Authority should view the arguments of AT&T and other interexchange carriers with particular skepticism, particularly since they have the most to lose from BellSouth's entry into the long distance market. The lessons of New York and Texas are that the CLECs that claim most vociferously that local markets are not open are the first to compete once the barrier to interLATA entry falls. For example, in New York, AT&T insisted that "[n]o competitor, including AT&T, is yet able to compete for large volumes of orders from either residential or small- to mid-

sized business customers.”¹ However, just two months later, as Verizon was gaining Section 271 authority, AT&T entered the local market in New York with a flurry, increasing the number of local line customers it served from 97,989 in December 1999 to 750,000 by February 2001.²

This same scenario was repeated in Texas. In SBC’s Section 271 proceeding at the FCC, AT&T argued that “there is no factual basis on which this Commission could have concluded that competition in Texas will thrive with a level of service outages that the Commission deemed tolerable in New York,”³ and that “[t]he simple fact is that SWBT does not provide parity access to its OSS now, and every indication is that the present disparity in treatment faced by CLECs will deepen as volume increases.”⁴ Despite these alleged problems, AT&T went from 150,000 local customers in Texas in July 2000 to 330,000 local customers by February 2001, just months after AT&T claimed competition was impossible. Competitive lines lost to all CLECs in Texas increased 81% between January 2000

¹ *Comments of AT&T Corp. in Opposition to Bell Atlantic’s Section 271 Application for New York*, CC Docket No. 99-295, 2 (filed Oct. 19, 1999).

² *AT&T Offers New Yorkers a New Choice for Local Residential Phone Services*, (Dec. 1, 1999) (News Release), <http://www.att.com/press/item/0,1354,2302,00.html>; *Local Exchange Companies Ranked by Lines Served*, New York Public Service Commission, as of 12/31/99, <http://www.dps.state.ny.us/rankbyal.htm>; Yochi J. Dreazen and Deborah Solomon. *AT&T Chief Says Baby Bells May Price Company Out of Local Service Markets*, Wall Street Journal A4 (Feb. 8, 2001).

³ *Supplemental Reply Comments of AT&T Corp. in Opposition to SBC’s Second Section 271 Application for Texas*, CC Docket 00-65, 22 (filed May 19, 2000).

⁴ *Reply Comments of AT&T Corp. in Opposition to SBC’s Second Section 271 Application for Texas*, CC Docket 00-65, 42 (filed February 22, 2000).

and January 2001.⁵ Thus, real-world evidence shows that the best way to increase competition in the local exchange market is to grant BOCs Section 271 authority.

The time is now for the Authority to act and consider BellSouth's evidence. Delaying this process will serve no purpose other than to deny Tennessee consumers the benefits already seen by consumers in New York and Texas.

II. BellSouth Will Present to the Authority the Evidence Necessary for It to Render a Decision on BellSouth's Compliance with the Competitive Checklist.

BellSouth is committed to "provid[ing] the Authority with all the supporting evidence it needs to perform its consultative role."⁶ In June 1999, when BellSouth withdrew its prior Section 271 notice, the TRA established a procedural framework for consideration of future Section 271 submissions. These procedures included the expectation that BellSouth would submit "the filing that it will rely on before the FCC."⁷ Numerous changes have occurred since that order, including the advancement of local competition through the efforts by the Authority, BellSouth and CLECs, and the FCC's clarification of its expectations for Section 271 applications. Further, were BellSouth constrained to submit to the FCC only that information submitted to the Authority, the data would be several months old by

⁵ *SWB Long Distance Accelerates Market Competition*, (Public Affairs Release), http://www.sbc.com/Long_Distance/0,2951,7,00.html (last visited June 22, 2001).

⁶ BellSouth Telecommunications, Inc.'s Preliminary Notice of Filing and Request for Scheduling Conference, *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA Service) In Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309 at 2 (filed May 30, 2001).

the time of the FCC's review. In its Preliminary Notice of Filing on May 30, 2001, BellSouth argued that, in light of these factors, it would be appropriate to adopt modifications and streamlining of the TRA's Section 271 procedural framework.⁸ The Hearing Officer is considering the potential need for modifications to the prior procedures, and sought comment on the appropriate procedures for evaluation of BellSouth's Section 271 application. The Hearing Officer can adopt the appropriate procedures for this proceeding without being limited in the manner AT&T and the other commenters suggest.

As BellSouth stated in its July 19, 2001 comments in this proceeding, the TRA should undertake its consideration of BellSouth's forthcoming Section 271 submission using its own procedural and filing requirements, and not needlessly constrain itself or the proceeding by adopting the FCC's rigid Section 271 review process.⁹ The FCC expects that the state proceedings not only will help to narrow the issues in dispute, but will also update the record with the most recent data. The TRA can better ensure that it can present the FCC with a complete record by maintaining the flexibility to establish a schedule based on the needs of the Authority and the parties as determined before and during the proceeding. The

⁷ *Initial Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal and Withdrawal*, Docket No. 97-00309 at 16 (June 1, 1999).

⁸ *Id.*

⁹ Comments of BellSouth Telecommunications, Inc. Regarding the Application of the FCC's Procedural Requirements To This Proceeding, *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA Service) in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309 (filed July 19, 2001).

FCC expects BellSouth to present its case based on the most current applicable information. Indeed, the FCC's Section 271 procedures call for state comment 20 days after BellSouth files with the FCC, ensuring that the TRA continues to provide its guidance on the most up-to-date information. Therefore, a review of the most current information available as it becomes available during the proceeding facilitates the Authority's ability to provide its comments to the FCC. Moreover, the FCC may issue orders during the pendency of a state 271 proceeding that will impact the requirements necessary to gain FCC 271 approval and on which the Authority may want to hear evidence of compliance. For example, its line sharing order in 1999 established line sharing obligations for the first time. In 2001, its line sharing reconsideration order clarified line sharing and line splitting obligations in the context of UNE-P and established a new rulemaking to address potential unbundling obligations, especially related to Next Generation Digital Loop Carriers.¹⁰

BellSouth's proposed procedures allow the Authority to consider BellSouth's entire Section 271 case, and fulfill its advisory role established under the Telecommunications Act of 1996. BellSouth will submit Tennessee and regional

¹⁰ See the FCC's Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 20912 (1999) ("Line Sharing Order") that established line sharing obligations for the first time; and its Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 16 FCC Rcd 2101 (2001) ("Line Sharing Reconsideration Order") clarifying line sharing and line splitting obligations in the context of UNE-P and establishing a new rulemaking to address potential unbundling obligations especially related to Next Generation Digital Loop Carriers.

performance data, demonstrating compliance with its region-wide SQM, which was adopted by the Georgia Commission. BellSouth's entire Section 271 case will be filed between the Section 271 docket and the OSS docket. Rather than cut off information upon the filing of a formal Section 271 notice, BellSouth's recommended procedures would allow the Authority to consider subsequent performance data, to ensure that its advice to the FCC is based on the most current information. AT&T alleges in its comments that allowing for such flexibility in a state 271 procedure is inconsistent with BellSouth's statement that its July 30, 2001 filing will be substantially the filing BellSouth intends to make at the FCC. This allegation is based on the false premise that underlies AT&T's motion to dismiss – that the Authority should postpone consideration of BellSouth's 271 evidence until the generic performance measurements and OSS dockets are complete. As explained in BellSouth's response to the motion to dismiss, it is perfectly logical and reasonable for the Authority to divide issues into separate proceedings and move forward with those proceedings simultaneously. By utilizing parallel proceedings the Authority is able to address the complex 271 issues more quickly and efficiently.

AT&T's and XO's suggestion to adopt FCC procedures, including the "complete when filed" standard, would unduly constrain the Authority and the proceeding, and would delay the benefits of interLATA competition.

CONCLUSION

For the following reasons, the Authority should not constrain itself by adopting the FCC's Section 271 procedures in this state proceeding.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

Fred McCallum, Jr.
Lisa Foshee
675 W. Peachtree Street, Suite 4300
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2001, a copy of the foregoing document was served on the parties of record, via hand delivery, facsimile, overnight or US Mail, addressed as follows:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
205 Capitol Blvd, #303
Nashville, TN 37219

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Dulaney O'Roark, Esquire
MCI WorldCom, Inc.
Six Concourse Pkwy, #3200
Atlanta, GA 30328

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

James P. Lamoureux
AT&T
1200 Peachtree St., NE, #4068
Atlanta, GA 30367

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Cynthia Kinser, Esquire
Consumer Advocate Division
P. O. Box 20207
Nashville, TN 37202

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Donald L. Scholes
Branstetter, Kilgore, et al.
227 Second Ave., N.
Nashville, TN 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Enrico C. Soriano
Kelley, Drye & Warren
1200 19th St., NW, #500
Washington, DC 20036

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Guilford Thornton, Esquire
Stokes & Bartholomew
424 Church Street
Nashville, TN 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

D. Billye Sanders, Esquire
Waller, Lansden, Dortch & Davis
511 Union St., #2100
Nashville, TN 37219-1750

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Andrew O. Isar, Esquire
ASCENT
3220 Uddenberg Lane, NW
Gig Harbor, WA 98335

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

